

COMMISSIONER'S DIRECTIVE #13

JULY 2007

(Replaces Directive #13 dated September 1989)

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Claim for Refund Procedures

REFERENCES: IC 6-8.1-1-4, IC 6-8.1-9-1

Introduction

This Directive sets forth the procedures which are to be followed by all taxpayers who file a claim for refund pursuant to IC 6-8.1-9-1 and outlines the proper manner in which the Indiana Department of Revenue will discharge its duties under the statute.

Authority:

IC 6-8.1-9-1 establishes both the rights and the remedies for a person who determines that more tax has been paid than is legally due. This section is in contrast to IC 6-8.1-9-2 where the Department finds that a person has paid more tax than is legally due.

IC 6-8.1-9-1(a) states the statutory period within which a claim for refund may be filed. The prerequisite for obtaining a refund is that the person must file the claim with the Department within three years after the latter of the following:

- (1) the due date of the return;
- (2) the date of payment; or
- (3) in the case of a return filed for the state gross retail or use tax, the gasoline tax, special fuel tax, motor carrier fuel tax, .., the end of the calendar year which contains the taxable period for which the return is filed.

A claim for refund for taxes withheld is limited to two years.

IC 6-8.1-1-4 defines "due date" to include the last day of an extension period. If an extension of time is applicable for the tax period for which the overpayment is claimed, the taxpayer must provide the Department with information verifying the same.

If the Department determines that the claim for refund is barred by the statute of limitations, the person will receive an Order Denying Refund.

IC 6-8.1-9-1(a) also mandates that the claim must set forth the amount of the refund claimed and the reasons that the person is entitled to the refund. 45 IAC 15-9-2(d) provides that the claim for refund must set forth:

- (1) the amount of refund claimed;
- (2) a sufficiently detailed explanation of the claim so that the Department may determine its correctness;
- (3) the tax period for which the overpayment is claimed; and
- (4) the year and date the overpayment was made.

The claim for refund shall be filed on a Form 110-L Claim for Refund, or an amended return that indicates an overpayment of tax.

IC 6-8.1-9-1(b) requires the Department to consider the claim for refund. In considering the claim, the Department may request any additional information which may be necessary in making a determination regarding the validity of the claimed overpayment. If the information requested is not provided and the Department is therefore without sufficient information to grant the refund, the claim will be denied. The person who has failed to provide the Department with the necessary requested information will receive a notice of the Department's decision. Such notice will be in the form of an Order Denying Refund.

If the Department grants the claim for refund in full, a warrant for the payment of the claim is sufficient notice of the Department's decision.

In the event the claim for refund is denied in part or in full, the person will receive a Memorandum of Decision with an attached explanation stating the reason(s) for such denial.

The Department shall, if requested by the taxpayer, hold a hearing on the claim for refund for purposes of obtaining and considering additional evidence. The Department will not initiate the hearing process. For purposes of requesting a hearing, the person must attach such request to the claim for refund form submitted to the Department.

If the Department decides to grant the claim for refund in full based upon information provided prior to a hearing, a hearing will not be conducted. A warrant for the payment of the claim is sufficient notice of the Department's decision.

Once a hearing date has been confirmed, failure to appear will result in a denial of that portion of the claim where the person has failed to provide sufficient evidence to verify the claimed overpayment. The person will receive a Final Order Denying Refund noting such failure to appear with an attached explanation of the Department's reason(s) for denial.

Subsequent to the hearing, if the Department determines that the claim will be granted in full, a warrant for the payment of the claim is sufficient notice of the decision.

If subsequent to the hearing, the Department denies a portion of the claim or the entire claim, the person will receive a Final Order Denying Refund with an attached explanation stating the reason(s) for denial.

Any person in receipt of an Order Denying Refund, a Memorandum of Decision or a Final Order Denying Refund has a statutory remedy for appeal with the Indiana tax court as provided under IC 6-8.1-9-1(c) which states:

- (c) If the person disagrees with any part of the Department's decision, the person may appeal the decision, regardless of whether or not the person protested the tax payment or whether or not the person has accepted a refund. The person must file the appeal with the tax

court. The tax court does not have jurisdiction to hear a refund appeal suit, if:

- (1) the appeal is filed more than three years after the date the claim for refund was filed with the Department:
- (2) the appeal is filed more than 90 days after the date the Department mails the decision of denial to the person; or
- (3) the appeal is filed both before the decision is issued and before the 181st day after the date the person files the claim for refund with the Department.

Each Order Denying Refund will be dated and such date will correspond with the date the Department mails the decision of denial to the person. The date will begin the 90 day period within which an appeal must be filed with the Indiana tax court.

If the person requests the Department to reconsider its Order Denying Refund, Memorandum of Decision or Final Order Denying Refund, the Department in its discretion may grant reconsideration under extenuating circumstances. However, once an Order Denying Refund, Memorandum of Decision or Final Order Denying Refund has been issued, any further consideration of the claim by the Department will not serve to toll the statute of limitations. Therefore, even if the Department is reconsidering the claim for refund, a person must file an appeal with the tax court within 90 days of the date on the Order Denying Refund, Memorandum of Decision or Final Order Denying Refund to preserve the right of appeal. The sole remedy for an appeal of the Department's decision is with the tax court.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart
Commissioner